

202032009



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
Employee Plans

May 13, 2020

Uniform Issue List: 408.03-00

Legend

Taxpayer A	=
Taxpayer B	=
IRA C	=
IRA D	=
IRA E	=
IRA F	=
Financial Institution G	=
Financial Advisor H	=
Financial Institution I	=
Amount 1	=

Amount 2 =

Date 1 =

Date 2 =

Dear :

This is in response to your request dated October 31, 2019, as supplemented by letters dated March 18, 2020, and March 20, 2020, in which you request, through your authorized representative, waivers of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

You submitted, under penalties of perjury, the following facts and representations in support of your ruling request.

Taxpayer A represents that on Date 2, he received a distribution equal to Amount 1 from IRA C. Taxpayer A asserts that he was unable to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code because of errors made by Financial Advisor H and Financial Institution I, which led to the investment of Amount 1 in a non-IRA account.

Taxpayer B, Taxpayer A's spouse, represents that on Date 2, she received a distribution equal to Amount 2 from IRA D. Taxpayer B asserts that she was unable to accomplish a rollover of Amount 2 within the 60-day period prescribed by section 408(d)(3) of the Code because of errors made by Financial Advisor H and Financial Institution I, which led to the investment of Amount 2 in a non-IRA account.

On Date 1, Taxpayer A and Taxpayer B worked with Financial Advisor H of Financial Institution G in rolling over distributions from their 401(k) plan accounts into IRA C and IRA D. Subsequently, Taxpayer A and Taxpayer B wanted to roll over funds from IRAs C and D to IRAs E and F, respectively. IRA E and IRA F were maintained by Financial Institution I. Taxpayers A and B intended to roll over Amounts 1 and 2 into their IRAs with Financial Institution I which would invest Amounts 1 and 2 in real estate partnerships. Having worked with Financial Advisor H and Financial Institution I in the past, Taxpayers A and B relied on their advice to effectuate rollovers from IRA C to IRA E and from IRA D to IRA F. On Date 2, Taxpayer A took a distribution equal to Amount 1 from IRA C for purposes of rolling it over into IRA E. On this same date, Taxpayer B took a distribution equal to Amount 2 from IRA D for purposes of rolling it over into IRA F. Due to errors on

the part of Financial Advisor H and Financial Institution I, however, Amount 1 and Amount 2 were invested in non-IRA accounts. Taxpayer A and Taxpayer B received Forms 1099-R showing taxable distributions from IRA C and IRA D, which they believed were issued in error. Taxpayer A and Taxpayer B became aware that Amount 1 and Amount 2 were not held in IRA accounts after the expiration of the 60-day period.

Based on the above facts and representations, Taxpayer A and Taxpayer B request the following rulings:

- (1) Taxpayer A requests a ruling that the Service waive the 60-day rollover requirement under section 408(d)(3) of the Code as to the distribution of Amount 1 on Date 2 from IRA C.
- (2) Taxpayer B requests a ruling that the Service waive the 60-day rollover requirement under section 408(d)(3) of the Code as to the distribution of Amount 2 on Date 2 from IRA D.

Section 408(a) of the Code defines an individual retirement account to mean a trust created or organized in the United States and requires that the trustee be a bank or an approved non-bank trustee.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money or any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that the rollover provisions of section 408(d)(3)(A)(i) do not apply to any amount received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount from an IRA that was not includible in gross income because of the application of the rollover provisions in section 408(d)(3) ("one-year limitation").

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d)(3) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

Section 3.02 of Revenue Procedure 2003-16, 2003-4 I.R.B. 359 ("Rev. Proc. 2003-16"), provides that the Service will issue a ruling waiving the 60-day rollover requirement in cases where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster or other events beyond the reasonable control of the taxpayer. In determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Section 3.04 of Rev. Proc. 2003-16 provides that the rules regarding the amount of money or other property that can be rolled over into an eligible retirement plan within the 60-day rollover period apply to deposits made pursuant to a waiver of the 60-day rollover period (thus, if a taxpayer received \$6,000 in cash from the taxpayer's IRA, the most that could be deposited into an eligible retirement plan pursuant to a waiver of the 60-day rollover period is \$6,000).

The information and documentation submitted are consistent with Taxpayer A's assertion that he was unable to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) because of errors made by Financial Advisor H and Financial Institution I, which led to the investment of Amount 1 in a non-IRA account.

The information and documentation submitted are consistent with Taxpayer B's assertion that she was unable to accomplish a rollover of Amount 2 within the 60-day period prescribed by section 408(d)(3) because of errors made by Financial Advisor H and Financial Institution I, which led to the investment of Amount 2 in a non-IRA account.

Therefore, pursuant to section 408(d)(3)(I) of the Code, with respect to ruling request (1), the Service waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA C on Date 2. Taxpayer A has 60 days from the issuance of this letter ruling to contribute cash in an amount not in excess of Amount 1 into an IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, will be met with respect to the contribution, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

Regarding ruling request (2), the Service waives the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA D on Date 2. Taxpayer B has 60 days from the issuance of this letter ruling to contribute cash in an amount not in excess of Amount 2 into an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, will be met with respect to the contribution, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code or to amounts that are subject to the one-year limitation under section 408(d)(3)(B).

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives.

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If you wish to inquire about this ruling, please contact

Please address all correspondence to

SE:T:EP:RA:T1.

Sincerely,

Adam P. Zaebs

Adam P. Zaebs, Manager
Employee Plans Technical Group 1

Enclosures:

Notice of Intention to Disclose

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cc: